

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1908.

No. 1958 **607**

No. 30, SPECIAL CALENDAR.

EDWARD B. MOORE, COMMISSIONER OF PATENTS,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA *EX REL.* WILLIAM H.
BOYER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED SEPTEMBER 25, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1908.

No. 1959.

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UNITED STATES OF AMERICA *EX REL.* WILLIAM H.
BOYER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1959.

EDWARD B. MOORE, Commissioner of Patents, Appellant,

vs.

UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER.

a Supreme Court of the District of Columbia.

At Law. No. 50575.

UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER, Relator,

vs.

EDWARD B. MOORE, Commissioner of Patents, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition.*

Filed May 20, 1908.

In the Supreme Court of the District of Columbia.

At Law. #50575.

UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER, Relator,

vs.

EDWARD B. MOORE, Commissioner of Patents, Respondent.

1. The above named relator respectfully shows to the Court that he is a citizen of the United States residing in New York City, Borough of Manhattan, in the State of New York, and doing business at #47 Leonard Street, said city of New York, and that he is Vice President and General Eastern Manager of the Union Special Machine Company of Chicago, Illinois; that the respondent, Edward B. Moore, is the Commissioner of Patents, duly qualified and acting as such, and that said respondent was such Commissioner and acting as

such at the time of the occurrence between the parties hereinafter mentioned.

Your relator further says:

2. That one Joseph Berger, Jr., filed in the United States Patent Office an application for a patent for a "Feeding and Binding Mechanism for Sewing Machines," on August 4th, 1902, serially numbered 118,236, and that he subsequently divided said application and filed the division as a "Feeding Mechanism for Sewing
2 Machines" on March 19th, 1903, serially numbered 148,511, and that both of these applications were through mesne assignments duly assigned to your relator, as will appear by a duly certified abstract of title hereto attached and marked "Exhibit 1," as will appear by a duly certified copy of the assignment to your Relator hereto attached and marked "Exhibit 2."

3. That immediately upon the filing of the assignment "Exhibit 2," (which made the chain of title to said applications complete in him,) your Relator under date of April 20th, 1908, as appears from the paper hereto attached and marked "Exhibit 3," did through his attorney petition the Commissioner of Patents (the Respondent) for permission to inspect and obtain copies of the aforesaid applications of Joseph Berger, Jr., which petition was denied by the said Respondent as appears from the certified copy of the decision of said Respondent, dated April 27th, 1908, which is hereto annexed and marked "Exhibit 4."

4. The Patent Office records show, as appears from "Exhibit 1," that the said Joseph Berger, Jr., did on November 24th, 1902, enter into an agreement with certain parties for the transfer of said applications upon the payment of royalties by said parties for the practice of the inventions set forth in the aforesaid applications, and that pursuant to said agreement the said Joseph Berger, Jr., did execute assignments of the aforesaid applications, subject to the conditions of such agreement, and that as appears from "Exhibit 1," the rights under said applications became vested in the Metropolitan Sewing
3 Machine Company, a corporation of New York, and the obligations of said agreement were assumed by said Metropolitan Sewing Machine Company; that said corporation failed and refused to comply with the terms of the contract, and thereupon the said Joseph Berger, Jr., transferred all his right, title and interest in the said contract and in said application, through mesne assignments to your Relator, all of which appears fully set forth in "Exhibit 1."

5. That your Relator brought suit in the Supreme Court of the State of New York against the Metropolitan Sewing Machine Company, aforesaid, to compel an assignment of said applications for patent to your Relator, and for an accounting for royalties overdue; that the case duly came on for trial February 10th, 1908, the decision of Justice O'Gorman in favor of your Relator being announced from the bench, and his final decision and order being promulgated February 17th, 1908, as appears from the certified copy of such decision forming a part of "Exhibit 5" hereto attached.

6. That appeal was taken by said Metropolitan Sewing Machine

Company, defendant in said cause to the appellate division of the Supreme Court, and motion was made by the defendant, said Metropolitan Sewing Machine Company, for stay of proceedings pending the determination of said appeal; that Judge O'Gorman granted said stay on the condition that said defendant enter into a stipulation that it would take no action in the Patent Office to change the *status quo* of the aforesaid applications as it existed February 10th, 1908, as will appear from a certified copy of Justice O'Gorman's order dated March 10th, 1908, hereto attached and marked "Exhibit 6."

4 7. That said defendant refused to enter into this stipulation, and thereupon the motion for stay of proceedings was denied.

8. That said defendant refused to execute and deliver the assignment to your Relator under the order of the Court, and thereupon an order to show cause why said defendant should not be attached for contempt was obtained, and the motion coming on to be heard April 14th, 1908, the Honorable Justice Dowling issued an order adjudging the defendant corporation and its President, Lucius N. Littauer, in contempt, as appears from the certified copy of his decision hereto annexed and marked "Exhibit 7."

9. That thereupon said defendant and its President, Lucius N. Littauer, delivered to your Relator the duly executed assignment heretofore referred to as "Exhibit 2," which assignment was recorded in the United States Patent Office April 17th, 1908.

10. That upon petition filed by your Relator, March 4th, 1908, the Respondent, the Commissioner of Patents, had first suspended action on the aforesaid Berger cases in the Patent Office, as appears from duly certified copies of the said petition and the order of the Assistant Commissioner of Patents dated March 16th, 1908, certified copies of the petition and order being hereto annexed and marked "Exhibits 5 and 8," respectively.

11. That on March 28th, 1908, your Relator through his attorney filed a petition with the respondent for permission to inspect the aforesaid applications of Joseph Berger, Jr., in the Patent
5 Office, and obtain copies thereof, which petition was denied by the Assistant Commissioner of Patents under date of April 1st, 1908, as will appear from the certified copies of the petition and order hereto attached and marked respectively "Exhibits 9 and 10."

12. That upon the recording in the Patent Office of the assignment ("Exhibit 2"), vesting in him all right, title and interest in the aforesaid applications of Joseph Berger, Jr., your Relator did on April 20th, 1908, through his attorney, as shown by certified copy of petition heretofore referred to and marked "Exhibit 3," make request for leave to inspect and obtain copies of the aforesaid Berger cases, which request was granted by the Assistant Commissioner, under date of April 21st, 1908, as shown by certified copy of order of Assistant Commissioner hereto annexed and marked "Exhibit 11," unless the Metropolitan Company, the defendant in the New York suit heretofore referred to, should show cause April 24th, 1908, why the request should not be granted.

13. That the order to show cause came on for hearing April 27th, at which counsel for the Metropolitan Company set forth as reasons why your Relator's petition should not be granted, first, that in spite of the record title in the Patent Office being in your Relator, the appellate court might change the status and overrule Justice O'Gorman's and Justice Dowling's decisions, and second, knowledge of the Berger cases would be of value to the corporation of which your Relator is Vice-President and General Eastern Manager, in a suit now pending in the Southern District of New York, entitled "Union Special Machine Company *vs.* Metropolitan Sewing Machine Company;" that this information would be of value in the cross examination of defendant's expert in that suit, who is also one of the defendants therein, and attorney of record in the Patent Office for the Metropolitan Sewing Machine Company in connection with the aforesaid Berger cases; all of which appears in the certified copy of brief filed before the Commissioner of Patents, the Respondent, hereto annexed and marked "Exhibit 12;" that the Respondent, the Commissioner of Patents, held the cause shown for refusal to allow your Relator access to the Berger cases, sufficient, and denied your Relator's petition, as appears by certified copy of Respondent's order of April 27th, 1908, heretofore referred to and marked "Exhibit 4."

14. That in brief the ground given by the Respondent for refusing the petition of your Relator to inspect the aforesaid Berger application, is that the decision of the Supreme Court Justices of the State of New York ordering the execution and delivery of the assignment "Exhibit 2" to your Relator, *may be* reversed on appeal.

15. All of which will more fully and at length appear and be shown in the record exhibits which accompany this petition, to wit:

Exhibit No. 1. Abstract of Title Berger cases.

Exhibit No. 2. Assignment from Metropolitan Sewing Machine Company to William H. Boyer.

Exhibit No. 3. Petition of April 20th, 1908, to inspect and obtain copies of Berger cases.

Exhibit No. 4. Order of Commissioner April 27th, 1908.

7 Exhibit No. 5. Petition of William H. Boyer March 4th, 1905, and decision of Justice O'Gorman.

Exhibit No. 6. Order of Justice O'Gorman staying proceedings pending appeal.

Exhibit No. 7. Order adjudging Metropolitan Sewing Machine Company and its President, Lucius N. Littauer, in contempt of Court.

Exhibit No. 8. Order of Assistant Commissioner of Patents March 16th, 1908.

Exhibit No. 9. Petition of William H. Boyer March 28th, 1908.

Exhibit No. 10. Order of Assistant Commissioner of Patents of April 1st, 1908.

Exhibit No. 11. Order of Assistant Commissioner of Patents of April 21st, 1908.

Exhibit No. 12. Brief on behalf of Metropolitan Sewing Machine Company, filed April 27th, 1908.

16. That by the refusal of the said Edward B. Moore to permit your Relator to examine said applications of Joseph Berger, Jr., and obtain copies thereof, your petitioner was and is deprived of his legal rights, and is entirely without redress or remedy, unless this Honorable Court by writ of mandamus shall interpose in his behalf; that the Commissioner of Patents has deprived and is depriving him of his legal rights in that, first, the said Commissioner of Patents refuses to recognize the Patent Office records of assignments as evidencing the exclusive right, title and interest in the said Berger applications in your Relator, and in refusing to recognize
8 your Relator's rights in the premises to examine such applications; second, that the Commissioner of Patents has by his action nullified two decisions of one Justice of the Supreme Court of the State of New York, and one decision of another Justice of said Court, and by his ruling in refusing to recognize the assignment to your Relator, has virtually held the appeal to be a supersedeas, when both the Justices learned in the law of New York, have held the appeal not to act as a supersedeas; third, he is depriving your Relator in his capacity as an Officer of the Union Special Machine Company from his right to secure evidence which may benefit his Company in a pending suit; evidence which it is admitted by the attorney for the Metropolitan Company (Chapman) would benefit said Company in its rebuttal testimony now about to begin, and in the cross examination of said Chapman, who is one of the defendants, and also defendant's expert in the patent infringement suit referred to; thus depriving your Relator of evidence admittedly of value to him, which evidence is locked in the breast of the party making the admission; fourth, your Relator is unable to ascertain whether action is necessary on the said Berger applications to restore them to the *status quo* as it existed when title was transferred to him, or to ascertain whether, since February 10th, 1908, any action has been taken by the attorney for the Metropolitan Company in said Berger applications in the way of amendment or cancellation of claims.

Fifth. Your Relator is unable to ascertain whether action is necessary to save said Berger cases from abandonment by operation of law for failure to prosecute; the law providing that an
9 application becomes abandoned for lack of prosecution for a period of twelve months and the Commissioner of Patents has no authority to suspend the operation of the statute requiring such prosecution; sixth, your Relator is unable to answer the statements made to the trade by the Metropolitan Sewing Machine Company as made in a circular sent broadcast to the trade and marked "Exhibit A," attached to and forming a part of "Exhibit 9" hereto attached, particularly that portion couched in the following language:

"So far we have overcome every kind of opposition with the exception of their (Union Special Machine Company of which Boyer is Vice President) purchase of a contract for royalty we made with their present employee Berger on a device which is not embodied in the machines we are to-day offering on the market."

This may or may not be true. If the said Berger applications embody the broad principle of these machines, which the Metropolitan Sewing Machine Company is offering on the market, the rightful owner of the Berger applications and inventions and not the parties who are selling machines which might be subordinate thereto, should be the one to decide whether all the protection possible has been secured in the Berger cases.

17. Your Relator avers that these Berger cases, even if capable of dominating the machines the Metropolitan Company is offering on the market, may by prosecution at the hands of parties inimical to the rightful owners, be so emasculated and restricted as to the claims that when the patents issue they will not cover such machines, whereas if rightfully and conscientiously prosecuted, they would dominate them.

10 18. That the action of the said Edward B. Moore, Commissioner of Patents in the premises is a matter of public concern.

Wherefore your petitioner prays, that a writ of mandamus may be issued by this Honorable Court to the said Edward B. Moore, Commissioner of Patents, commanding him to grant to your Relator through his attorney, permission to inspect and obtain copies of the aforesaid applications of Joseph Berger Jr. And as in duty bound, your petitioner will ever pray, etc.

WILLIAM H. BOYER.

CHARLES L. STURTEVANT,
Solicitor and of Counsel.

STATE OF NEW YORK,
Borough of Manhattan, ss:

William H. Boyer, being duly sworn, deposes and says that he has read the foregoing petition by him signed and knows the contents thereof; that the statements therein contained are true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to such matters he verily believes them to be true.

WILLIAM H. BOYER.

Subscribed and sworn to before me, this 16th day of May, 1908.

[SEAL.]

MAX COHEN,
Notary Public (77), N. Y. Co.

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EXHIBIT No. 1.

Filed May 20, 1908.

DEPARTMENT OF THE INTERIOR.

(E Pluribus Unum.)

UNITED STATES PATENT OFFICE.

50575.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Digest of this Office of all Assignments, Agreements, Licenses, Powers of Attorney, and other instruments of writing, found of record up to and including *May 2, 1908*, that may affect

Application Filed by JOSEPH BERGER, JR.

Serial No. 118,236.

Filed August 14, 1902.

"Feed Mechanism for Sewing Machines."

Serial No. 148,511.

Filed March 19, 1903.

Being Division of Ser. No. 118,236.

"Feed Mechanisms for Sewing Machines."

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this fourteenth day of May, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.]

C. C. BILLINGS,

Assistant Commissioner of Patents.

12

Abstract of Title, Berger Cases.

Joseph Berger, Jr.

Instrument Dated Nov. 24, 1902; Recorded Dec. 19, 1902, Liber A 67, p. 5.

Parties.

Jos. Berger
to

The Manhattan Machine Supply
Company, Corporation of New
York, New York, N. Y.

Invention.

Feeding and Binding Mechanism
for Sewing Machines.

Appl'n made Aug. 4, 1902, S.
No. 118,236.

Ser. No. 148,511 is a Division of
Ser. No. 118,236.

Assigns, under provisions of contract of even date herewith, exclusive right, title and interest in said invention. Patent to issue to said assignee.

\$1. and other considerations.

Instrument Dated Dec. 18, 1903; Recorded June 24, 1904, Liber U 69, p. 402.

| Parties. | Invention. |
|--|--|
| Manhattan Machine Supply Co. to Lucius N. Littauer, Gloversville, N. Y. | Stitch Forming Mechanism. Filed August 23, 1902. Ser. No. 120,780. Filed June 5, 1903. Ser. No. 160,206. |
| Presser-Foot Mechanism. Filed Aug. 17, 1903. Ser. No. 169,684. | Loopers. Filed Jan. 30, 1903. Ser. No. 141,100. |
| Sewing Machines. Filed June 5, 1903. Ser. No. 160,207. | Filed June 5, 1903. Ser. No. 160,205. |
| Needle-Clamps. Filed Aug. 17, 1903. Ser. No. 169,685. | Overedging Machines. Filed Jan. 30, 1903. Ser. No. 141,101. |
| Also John P. Weis and Willis C. Robbins. Spool Holder. Filed Apr. 23, 1903. Ser. No. 153,915. Pat. 832,437. Oct. 2, 1906. | Filed June 5, 1903. Ser. No. 160,209. |
| Also Joseph Berger, Jr. Feeding Mechanism. Filed Aug. 4, 1902. Ser. No. 118,236. | Trimming Mechanism. Filed Mar. 6, 1903. Ser. No. 146,431. Filed June 5, 1903. Ser. No. 160,208. |
| 13 | |
| Filed Mar. 19, 1903. Ser. No. 148,511. (Division of Appl'n, 118,236- | Seam for Sewed Articles. Filed Mar. 16, 1903. Ser. No. 147,947. Pat. 877,275. Jan. 21, 1908. |
| Also Joseph W. Harding. Ro- tary Fans. Filed Apr. 23, 1903. Ser. No. 153,895. | Binding Mechanism. Filed Mar. 26, 1903. Ser. No. 149,651. |
| | Machines for Making Edgings. Filed Apr. 1, 1903. Ser. No. 150,534. |
| | Feeding Mechanisms. Filed Apr. 23, 1903. Ser. No. 153,907. Filed Aug. 17, 1903. Ser. No. 169,683. |
| | Sewing and Trimming Machine. Filed Apr. 23, 1903. Ser. No. 153,908. |

Assigns the exclusive right, title and interest in said invention throughout the United States and the territories thereof. Letters patent to issue to said assignee.

\$1. and other considerations.

Joseph Berger, Jr.

Instrument Dated June 14, 1904. Recorded June 24, 1904. Liber
U 69, p. 404.

| Parties. | Invention. |
|--|--------------|
| <p>Lucius N. Littauer to Metropolitan Sewing Machine Company, Corporation of New York.</p> | <p>Same.</p> |

Assigns the exclusive right, title and interest in said inventions throughout the United States and the territories thereof. Letters patent to issue to said assignee.
\$1. and other considerations.

14 Joseph Berger, Jr.

Instrument Dated Oct. 9, 1906. Recorded Oct. 17, 1906. Liber
K 75, p. 187.

| Parties. | Invention. |
|---|---|
| <p>Jos. Berger, Jr., to Union Special Machine Company, Corporation of Illinois, Chicago, Ill.</p> | <p>Feeding and Binding Attach- ments for Sewing Machines. Appl'n made Aug. 4, 1902. Ser. No. 118,236. Feeding Mechanism for Sewing Machines. Appl'n made Mar. 19, 1903. Ser. No. 148,511 (be- ing division of Appl'n 118,236). Also "certain inventions" in Feeding Mechanism for Sew- ing Machines. Not specifically identified.</p> |

This deed states that Berger made applications 118,236 and 148,511; that by deed recorded in Liber A 67, page 5, of Transfers of Patents, he assigned to the Manhattan Machine Supply Company exclusive right, title and interest in said inventions, subject to contract of even date therewith, a copy whereof is hereto attached and marked Exhibit A; that by deed recorded in Liber U 69, page 404, of said Transfers, the Metropolitan Sewing Machine Company succeeded to the rights under said assignment and obligations arising out of said contract marked Exhibit A; and that on November — 1904, Berger and said Metropolitan Company made an agreement regarding "certain inventions" in feeding Mechanisms for sewing machines whereby Berger gave to said Metropolitan Company certain rights of exportation, use, sale and manufacture of "said invention" in foreign countries when applied to "collarrette machines", as set forth in agreement hereto attached, marked Exhibit B. For \$1. and other consideration, Berger hereby assigns to said Union

Company all his right, title and interest in the inventions set forth in "the above entitled applications", and all letters patent therefor, including his reversional interest therein, and all claims and demands against said Metropolitan Company and said Manhattan Company, or either, including the right to sue for the retransfer of the applications and inventions covered thereby, and for all royalties, claims and demands due him by said Companies, or either of them, under the agreements, or either of said annexed agreements.

15

Joseph Berger, Jr.

Instrument Dated Jan. 5, 1907. Recorded Mar. 4, 1908. Liber R. 78, p. 496.

| Parties. | Invention. |
|---|--|
| Union Special Machine Company to William H. Boyer, New York, N. Y. | <div data-bbox="791 1064 833 1270" style="display: inline-block; vertical-align: middle; transform: rotate(-90deg);">Brace "A"</div> <div data-bbox="858 889 1527 1673" style="display: inline-block; vertical-align: middle;"> <p>Feeding and Binding Attachments for Sewing Machines. (Feed Mechanism for Sewing Machines) Appl'n made Aug. 4, 1902. Ser. No. 118,236. Feeding Mechanism for Sewing Machine. Appl'n made Mar. 19, 1903. Ser. No. 148,511. Being division of Ser. No. 118,236. Also "Certain Inventions" in Feeding Mechanisms for Sewing Machines. Not specifically identified. And Improvements (?)</p> </div> |

This deed states that Joseph Berger, Jr. made said applications for letters patent on said Improvements named in Brace A., that by assignments recorded respectively in Libers A. 67, page 5, U. 69, pages 402 and 404, of Transfers of Patents, the Metropolitan Sewing Machine Company succeeded to the rights under said assignment and obligations arising out of contract made by said Berger and the Manhattan Machine Supply Company and referred to in the assignment recorded in Liber A. 67, page 5, that by assignment recorded in Liber K. 75, page 187, of said Transfers, said Berger assigned to said Union Special Machine Company all his right, title and interest in "the aforesaid inventions" and letters patent therefor, including any reversionary interest therein, and any claims and demands against said Metropolitan Company and said Manhattan Company, or either of them, including right to sue for re-transfer of the applications and inventions covered by said assignments, and right to sue for all royalties, claims and demands due from said Manhattan and Metropolitan Companies, or either of them, under "the agreement hereinbefore referred to". Said Union Special Machine Company hereby assign all its right, title and interest in

"the invention set forth in the above mentioned applications" and in all letters patent which may be granted therefor including any reversionary interest therein and all claims and demands against said Metropolitan and Manhattan Companies, or either of them, with right to sue for re-transfer of the applications and inventions covered by "said assignment" and the right to sue for all royalties, claims and demands due said Manhattan and Metropolitan Companies, or either of them under the agreement hereinbefore referred to, a copy of which is attached to said assignment recorded in Liber K. 75, page 187, and marked exhibit A., and also under the agreement attached to said assignment in K. 75, and marked exhibit B.

\$1. and other consideration.

Joseph Berger, Jr.

Instrument Dated Apr. 10, 1908. Recorded Apr. 17, 1908. Liber T. 78, p. 358.

| Parties. | Invention. |
|---|---|
| Metropolitan Sewing Machine Co. to William H. Boyer, New York, N. Y. | Feeding and Binding Mechanism for Sewing Machines. Filed Aug. 4, 1902. Ser. No. 118,236. Filed Mar. 19, 1903. Ser. No. 148,511. (Being Division of Ser. No. 118,236.) |

Said Metropolitan Company assigns all the right, title and interest in "said invention" as described in "said applications" and letters patent therefor; which right, by assignment recorded in Liber A. 67, page 5, of Transfers of Patents, was assigned by Joseph Berger, Jr. to Manhattan Machine Supply Company, and by assignment recorded in Liber U. 69, page 402, of said Transfers was assigned by said Manhattan Company to Lucius N. Littauer, and by assignment recorded in said Liber U. 69, on page 404, was assigned by Littauer to said Metropolitan Company. Letters patent to issue to this assignee. No consideration named, but the deed is sealed and acknowledged.

Machine Supply Company duly assigned all its right, title and interest in and to the said invention, and in and to any Letters Patent granted thereon, to one Lucius N. Littauer, by assignment duly recorded in the United States Patent Office, in Liber 19 U 69, Page 402, of Transfers of Patents; and

Whereas thereafter, and on or about June 14, 1904, the said Lucius N. Littauer duly assigned the exclusive right, title and interest in and to said invention, and in and to any Letters Patent granted thereon, to the Metropolitan Sewing Machine Company, a corporation created by and existing under the Laws of the State of New York, said last-mentioned assignment being duly recorded in the United States Patent Office, in Liber U 69, Page 404, of Transfers of Patents;

Now, therefore, To All Whom It May Concern, be it known that the said Metropolitan Sewing Machine Company has sold, assigned and set over, and by these presents does hereby sell, assign and set over, unto William H. Boyer, of the City of New York, all the right, title and interest in and to the said invention, as fully set forth and described in the applications above identified, and in and to any Letters Patent granted or to be granted thereon, to the full end of the term thereof, throughout the United States and the Territories thereof, which right, title and interest, by the said assignment dated November 24, 1902 and recorded in Liber A 67, Page 5, of Transfers of Patents, was assigned by the said Joseph Berger, Jr., to the Manhattan Machine Supply Company and thereafter, by assignment duly recorded in Liber U 69, Page 402, was assigned by the said Manhattan Machine Supply Company to Lucius N. Littauer and thereafter, by assignment duly recorded in the United States Patent Office, in Liber U 69, Page 404, was assigned by the said

20 Lucius N. Littauer to the Metropolitan Sewing Machine Company; and the said Metropolitan Sewing Machine Company does hereby authorize and request the Commissioner of Patents to issue the said Letters Patent to the said William H. Boyer, as the assignee of the entire right, title and interest in and to the same, for his sole use and behoof, and for the use and behoof of his executors, administrators, assigns and legal representatives.

In testimony whereof, the said Metropolitan Sewing Machine Company has caused these presents to be subscribed by its President, and its corporate seal to be affixed thereto, this 10th day of April, in the year one thousand nine hundred and eight.

[Metropolitan Sewing Machine Co., Incorporated 1901,
New York.]

METROPOLITAN SEWING MACHINE CO.
LUCIUS N. LITTAUER, *President*.

STATE OF NEW YORK,
County of New York, ss:

On the 10th day of April, 1908, before me personally came Lucius N. Littauer, to me known, who, being by me duly sworn, did depose and say that he resided in Gloversville, N. Y. that he is the Presi-

dent, of the Metropolitan Sewing Machine Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[Chas. J. Decker, Notary Public, New York County.]

CHAS. J. DECKER,
Notary Public No. 22, N. Y. County.

Recorded April 17, 1908.

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EXHIBIT No. 3.

Filed May 20, 1908.

UNITED STATES OF AMERICA:

DEPARTMENT OF THE INTERIOR,
PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Records of this office of the Petition of Charles L. Sturtevant, filed April 20, 1908, relative to the

Applications of JOSEPH BERGER, JR.

Filed August 4, 1902.

Serial Number 118,236.

Feed Mechanism for Sewing Machines.

And March 19, 1903.

Serial Number 148,511.

Feed Mechanism for Sewing Machines.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 11th. day of May, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.]

C. C. BILLINGS,
Assistant Commissioner of Patents.

22 *Petition of April 20, 1908, to Inspect and Obtain Copies
Berger Cases,*

Hon. Commissioner of Patents, Washington, D. C.

SIR: In the matter of the application of Joseph Berger, Jr., for Improvements in Feeding and Binding Mechanism for Sewing machines, filed March 19, 1903, Serial No. 148,511, there having been

filed for record in the United States Patent Office on April 17th, 1908, an assignment of all right, title and interest in said application, to William H. Boyer, I do hereby request permission to examine the papers in connection with said application for Letters Patent, and to obtain copies thereof, by virtue of the Power of Attorney heretofore given me by the said William H. Boyer.

Respectfully,

CHARLES L. STURTEVANT.

April 20th, 1908.

M. M. A.

E. T. H.

23

EXHIBIT No. 4.

Filed May 20, 1908.

UNITED STATES OF AMERICA:

DEPARTMENT OF THE INTERIOR,
PATENT OFFICE.

50575.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Records of this office of the Order of the Commissioner, April 27, 1908, relative to the

Applications of JOSEPH BERGER, JR.

Filed August 4, 1902.

Serial Number 118,236.

Feed Mechanism for Sewing Machines.

And March 19, 1903.

Serial Number 148,511.

Feeding Mechanism for Sewing Machines.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 11th day of May, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.]

C. C. BILLINGS,
Assistant Commissioner of Patents.

24

Order of the Commissioner April 27, 1908.

Under the order of April 1, 1908, also by reason of the assignment of record by the Metropolitan Sewing Machine Company, said company can take no action on this application pending a decision on appeal. It appears therefore that the interests of Boyer are fully

protected and there is no good reason based on this ground for permitting him to have access to the application. The order holding that neither party be permitted to take action in the case in which appeal is pending is conceded to be just because of the injury that might result to the other party if the final decision should be in his favor. To permit Boyer under these circumstances to have access to the application might equally well cause irreparable injury to the Metropolitan Sewing Machine Company in case it is finally held entitled to the application.

The request of Boyer for access to this application pending the determination of the question of title on appeal is accordingly denied.

E. B. MOORE,
Commissioner.

April 27, 1908.

Recorded Vol. 90, Page 479.

25

EXHIBIT No. 5.

Filed May 20, 1908.

UNITED STATES OF AMERICA:

DEPARTMENT OF THE INTERIOR,
PATENT OFFICE.
50575.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Records of this office of the Petition of W. H. Boyer and certified copy of the Decision of Justice J. A. O'Gorman filed March 4, 1908, relative to the

Applications of JOSEPH BERGER, JR.

Filed August 4, 1902.

Serial Number 118,236.

Feed Mechanism for Sewing Machines.

And March 19, 1903.

Serial Number 148,511.

Feeding Mechanism for Sewing Machines.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 11th day of May, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.]

C. C. BILLINGS,
Assistant Commissioner of Patents.

26 *Petition William H. Boyer, March 4th, 1905, & Petition of Justice O'Gorman.*

Hon. Commissioner of Patents, Washington, D. C.

SIR: And now comes your petitioner, W. H. Boyer, and by his attorney, Charles L. Sturtevant, requests that action be suspended by the Patent Office for 30 days in the case of Joseph Berger, Jr., Feeding and Binding Mechanism for Sewing Machines, Serial No. 118,236, filed August 4th, 1902.

In support of the petition, the following reasons are set forth:

A suit brought by the said W. H. Boyer against the Metropolitan Sewing Machine Company, assignee of the Berger application above referred to, has just been decided in favor of the plaintiff. Said suit was brought in New York by the plaintiff against the Metropolitan Sewing Machine Company, to compel the re-assignment of the above entitled application and the invention covered thereby to the said plaintiff, he having purchased all the right, title and interest, including the reversionary rights, as appears from the record of assignments in the Patent Office.

A certified copy of the decision of Justice O'Gorman in the New York State Court is hereto attached, and it will be seen that under it
27 defendant has been ordered to reassign said application and the invention covered thereby to the plaintiff and to render an accounting for royalties under the contract theretofore entered into between the said Berger and the Metropolitan Sewing Machine Company.

Your petitioner fearing that action prejudicial to his rights in connection with the securing of a proper patent upon the invention, may have been, or will be, taken by the attorney for the assignee, it is asked that the above suspension of action on this case by the Patent Office be granted.

Attached hereto is a certified copy of the decision and judgement above referred to.

There has also been filed this day in the United States Patent Office, an assignment completing the chain of title in this invention to W. H. Boyer, your petitioner.

Respectfully,

W. H. BOYER,
By C. L. STURTEVANT, *Attorney.*

Washington, D. C., March 4th, 1908.

28 At a Special Term of the Supreme Court of the State of New York, held in and for the County of New York, at Part III. thereof, in the Borough of Manhattan and City of New York, on the 2nd day of March, 1908.

Present: Hon. James A. O'Gorman, Justice.

WILLIAM H. BOYER, Plaintiff,
against
METROPOLITAN SEWING MACHINE COMPANY, Defendant.

A summons and complaint in the above-entitled action having been duly served upon the defendant herein, and the said defendant having thereafter duly appeared by its attorney, and the plaintiff having thereafter served an amended complaint, and the defendant through its attorney having duly answered the same, and the issues arising on the said pleadings having duly come on for trial and the proofs of the parties and the arguments of counsel having been duly submitted and considered, and the court having made and filed its decision in writing, setting forth its findings of fact and conclusions of law herein, and directing the entry of judgment in favor of the plaintiff as therein stated, and the costs of the action having been duly adjusted,

29 Now, on motion of Messrs. Simpson, Werner & Cardozo, plaintiff's attorneys, it is

Adjudged, that the defendant Metropolitan Sewing Machine Company forthwith execute, acknowledge and deliver to the plaintiff, William H. Boyer, an assignment, in due form, reassigning and transferring to the said plaintiff all the right, title and interest in and to the inventions described in a certain agreement dated November 24, 1902, between Joseph Berger, Jr. and the Manhattan Machine Supply Company, and in and to any Letters Patent granted or to be granted therefor, which, by a certain assignment dated November 24, 1902, and recorded in Liber A 67, page 5, of Transfers of Patents, in the United States Patent Office, was assigned by Joseph Berger, Jr. to the Manhattan Machine Supply Company, and thereafter by assignment, duly recorded in the United States Patent Office in Liber U 69, page 402, of Transfers of Patents, was assigned by the said Manhattan Machine Supply Company to Lucius N. Littauer, and thereafter by assignment, duly recorded in the United States Patent Office in Liber U 69, page 404, of Transfers of Patents, was assigned by the said Lucius N. Littauer to the Metropolitan Sewing Machine Company, the defendant herein; and it is further.

Adjudged, that the said defendant account to the plaintiff for any and all sales of the said feeding and binding device referred to in the said agreement between the said Joseph Berger, Jr. and the Manhattan Machine Supply Company, made by the said defendant from the first day of January, 1905, up to the date of the execution of the said reassignment, and that the defendant pay to the plaintiff
30 a royalty of Ten Dollars (\$10) upon each feeding device so sold, whether the same was sold with or without a binding attachment, and that Isaac Bell Brennan Esq., Counselor-at-Law, of the City of New York, be and he hereby is appointed referee to take and state the said account of the defendant herein, and to report to the court the amount due from the defendant to the plaintiff for the royalties aforesaid; and that on the coming in of the Referee's report and the confirmation thereof, the plaintiff have final judgment

against the defendant for the sum so found to be due, together with the costs of such accounting; and it is further

Adjudged, that the plaintiff, William H. Boyer, recover from the defendant, Metropolitan Sewing Machine Company, the sum of One hundred & Seventeen 30/100 Dollars, the costs and disbursements of this action as taxed; and it is further

Adjudged, that either party to this action may apply to the court for further directions in the premises in respect of the execution of this decree, to be entered at the foot hereof.

J. A. O'GORMAN, *J. S. C.*
PETER J. DOOLING, *Clerk.*

A. L. M.

[NOTARIAL SEAL.] A copy.

PETER J. DOOLING, *Clerk.*

31

EXHIBIT #6.

Filed May 20, 1908.

Order of Justice O'Gorman Staying Proceedings Pending Appeal.

At a Special Term of the Supreme Court, held at Part I. thereof, at the County Court House, in the County of New York, on the 10 day of March, 1908.

Present: Hon. James A. O'Gorman, Justice.

50575.

WILLIAM H. BOYER, Plaintiff,
against

METROPOLITAN SEWING MACHINE Co., Defendant.

Upon reading and filing the affidavit of Charles McC. Chapman, verified March 5, 1908, the pleadings, decision and judgment in the above-entitled action, the defendant's notice of appeal, and the order of Mr. Justice Fitzgerald, dated March 6, 1908, requiring the plaintiff to show cause why an order should not be made staying the operation of the judgment directing an assignment to the plaintiff by the defendant of the right, title and interest in and to certain inventions and extending the defendant's time to deliver said assignment, provided for in said judgment, until a reasonable time

32 after the determination of the appeal which the defendant has taken to the Appellate Division of the Supreme Court, and further staying the hearing before the Referee on the accounting provided for in said judgment, and for such other relief as may be just and proper; and upon reading and filing, in opposition to said motion, the affidavit of Benjamin N. Cardozo, verified March 7, 1908; after hearing Mr. Sherrill Babcock, of counsel for defendant, in support of the motion, and Mr. Benjamin N. Cardozo, of counsel for plaintiff, in opposition thereto, it is

Ordered that the proceedings on the part of the plaintiff to compel the delivery of the assignment by the defendant transferring to the plaintiff the right, title and interest in and to the inventions and Letters Patent described in the judgment herein, be and the same hereby are stayed until five (5) days after the determination by the Appellate Division of the Supreme Court of the defendant's appeal from the judgment herein, upon the following conditions:

1. That the defendant prosecute said appeal with all reasonable diligence and bring the same on for hearing at the earliest date that may be reasonably practicable;

2. That the defendant, within two (2) days after the entry of this order and service of a copy thereof on the attorney for the defendant, execute and deliver to the plaintiff, or the plaintiff's attorneys, a stipulation entitled in this action in the following form:

It is hereby stipulated that, during the pendency of the appeal to the Appellate Division from the judgment in the above-entitled action, and during the continuance of the stay of the proceedings thereunder, no action of any kind will be taken by the defendant, or its attorneys, agents or solicitors, for the purpose of changing the *status quo* with reference to the applications for
33 patents now pending in the United States Patent Office and designated as Serial Numbers 118,236 and 148,511 as such *status quo* existed on February 10, 1908, the date of the trial of this action, or for the purpose of procuring the Commissioner of Patents to act upon said applications pending said appeal, and said defendant consents that any and all action on the part of said Commissioner with reference to said applications shall be suspended until and hearing and determination of said appeal.

This stipulation by the defendant is given in consideration of the plaintiff's stipulation that no action will be taken by him with reference to said applications during the continuance of this stay except such action, if any, as may be necessary to preserve the *status quo* as the same existed on February 10, 1908, and except such proceedings, if any, as may be necessary to cause the Commissioner of Patents to suspend action on said applications during the pendency of said appeal or the continuance of said stay.

Dated, March —, 1908.

And it is further

Ordered that, if the defendant shall fail to execute and deliver the foregoing stipulation as hereinbefore provided, then the said motion for a stay of proceedings in respect of said provision of said judgment directing the delivery of said assignment be and the same is hereby in all things denied; and the said stay of proceedings contained in the aforesaid order to show cause is, in said event, vacated and set aside; and it is further

Ordered that the proceedings on the part of the plaintiff with reference to the accounting for royalties before the Referee be and the same hereby are stayed until five (5) days after the determination of said appeal by the Appellate Division of the Supreme Court, provided said appeal is prosecuted by the defendant with all reasonable

diligence, and provided further that the defendant execute and deliver to the plaintiff, within ten (10) days after the entry of this order and service of the same on the defendant's attorney, with notice of entry, an undertaking with sufficient sureties in the sum of Five thousand Dollars (\$5,000) for the payment by the defendant to the plaintiff of any moneys that may be found due by the defendant to the plaintiff upon such accounting and under the final judgment herein; and, in default of compliance by the defendant with said conditions, the motion for a stay of proceedings in respect of said accounting is denied.

J. A. O'GORMAN, *J. S. C.*

A copy.
[SEAL.]

PETER J. DOOLING, *Clerk.*

A. L. M.

35

EXHIBIT #7.

Filed May 20, 1908.

Order Adjudging Metropolitan Co. & its President in Contempt of Court.

At a Special Term of the Supreme Court, held at Part I. thereof, at the County Court House, in the County of New York, on the 14 day of April, 1908.

Present: Hon. Victor J. Dowling, Justice.

50575.

WILLIAM H. BOYER, Plaintiff,
against

METROPOLITAN SEWING MACHINE Co., Defendant.

On reading and filing the order to show cause, made by the Honorable James A. O'Gorman, one of the Justices of this Court, requiring the defendant, Metropolitan Sewing Machine Company, and Lucius N. Littauer, the President of said defendant, to show cause why the said defendant and the said Lucius N. Littauer, the President thereof, should not be punished, as for a contempt, for misconduct in failing to obey the judgment of this Court, dated March 2, 1908, commanding the said defendant to execute, acknowledge and deliver the assignment therein referred to, and why such other and further order or relief should not be granted to the plaintiff as might be just and proper; and on reading and filing the affidavits on which such order to show cause was granted, viz., the affidavit of Benjamin N. Cardozo, verified April 1, 1908; the affidavit of William H. Freese, verified April 1, 1908; and the affidavit of Louis Werner, verified April 1, 1908, together with the several exhibits thereto annexed and marked "Exhibit A," "Exhibit B," "Exhibit C," "Exhibit D," "Exhibit E," "Exhibit F," "Exhibit G," "Exhibit H," "Exhibit I" and "Exhibit J," and upon

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reading and filing the affidavit of William H. Freese showing due service of the said order to show cause and of the papers on which the same was granted on the said defendant, Metropolitan Sewing Machine Company, and on the said Lucius N. Littauer and on the attorney for the defendant herein; and upon reading and filing the affidavits of Lucius N. Littauer and Chas. McC. Chapman verified April 4, 1908, and Sherrill Babcock verified April 6, 1908, in opposition; and the said motion having duly come on for hearing on the return of the said order to show cause, after hearing Mr. Benjamin N. Cardozo, of counsel for the plaintiff, in support of said motion, and Mr. Sherrill Babcock, of counsel for the defendant, Metropolitan Sewing Machine Company, and for the said Lucius N. Littauer, the President of said defendant, in opposition thereto, and due deliberation having been had;

Now, on motion of Messrs. Simpson, Werner & Cardozo, plaintiff's attorney, it is

Ordered and adjudged that the defendant, Metropolitan Sewing Machine Company, and Lucius N. Littauer, the President of
 37 said defendant, be and the same hereby are guilty of a contempt of court, in having wilfully disobeyed the judgment of this Court, dated the 2d day of March, 1908, requiring "that the
 "defendant, Metropolitan Sewing Machine Company, forthwith execute, acknowledge and deliver to the plaintiff, William H. Boyer, "an assignment in due form reassigning and transferring to the
 "said plaintiff all the right, title and interest in and to the inventions described in a certain agreement, dated November 24, 1902, "between Joseph Berger, Jr., and the Manhattan Machine Supply
 "Company, and in and to any Letters Patent granted or to be "granted therefor, which, by a certain assignment, dated November 24, 1902, and recorded in Liber A 67, Page 5, of Transfers of
 "Patents, in the United States Patent Office, was assigned by "Joseph Berger, Jr., to the Manhattan Machine Supply Company, "and thereafter, by assignment duly recorded in the United States
 "Patent Office in Liber U 69, Page 402, of Transfers of Patents, "was assigned by the said Manhattan Machine Supply Company to
 "Lucius N. Littauer, and thereafter, by assignment duly recorded "in the United States Patent Office, in Liber U 69, Page 404, of
 "Transfers of Patents, was assigned by the said Lucius N. Littauer "to the Metropolitan Sewing Machine Company, the defendant
 "herein." in that the said defendant and the said Lucius N. Littauer have refused to execute, acknowledge and deliver to the plaintiff the assignment therein referred to. after due service upon them of a certified copy of said judgment, and after demand duly made upon
 38 them by the plaintiff that they execute the same, and after tender to the said Littauer of a proper form of assignment and a request that he execute, acknowledge and deliver the same in behalf of the said defendant; and it is further

Ordered and adjudged that said misconduct of said defendant, Metropolitan Sewing Machine Company, and of said Lucius N. Littauer, was calculated to and actually did defeat, impair, impede

and prejudice the rights and remedies of the said William H. Boyer, the plaintiff herein; and it is further

Ordered and adjudged that the said Lucius N. Littauer, for said misconduct, is hereby fined the sum of One hundred Dollars (\$100); and it is further

Ordered and adjudged that the said Lucius N. Littauer be imprisoned, in close custody, in the County Jail in the County of New York, there to remain until he pays the said fine, and until he executes, acknowledges and delivers to the plaintiff, in the name and behalf of the defendant, Metropolitan Sewing Machine Company, and as the President thereof, the assignment described in the aforesaid judgment; and it is further

Ordered and adjudged that a warrant of commitment issue accordingly, unless said Lucius N. Littauer complies with the provisions hereof within twenty-four hours after service of a copy of this order upon him.

Enter

[SEAL.]

V. J. D.,
Justice Supreme Court.

W. J. D.

A copy.

PETER J. DOOLING, *Clerk.*

39

EXHIBIT No. 8.

Filed May 20, 1908.

UNITED STATES OF AMERICA:

DEPARTMENT OF THE INTERIOR,
PATENT OFFICE.
50575.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Records of this office of Order of the Assistant Commissioner, March 16, 1908, relative to the

Applications of JOSEPH BERGER, JR.

Filed August 4, 1902.

Serial Number 118,236.

Feed Mechanism for Sewing Machines.

And March 19, 1903.

Serial Number 148,511.

Feeding Mechanism for Sewing Machines.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington

this 11th day of May, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.]

C. C. BILLINGS,
Assistant Commissioner of Patents.

40 *Order of Assistant Commissioner of March 16th, 1908*

In view of the decision of the court in his favor petitioner's request for a suspension of action for thirty days in this case is believed to be reasonable. Counsel for the Metropolitan Sewing Machine Company, defendant in the above suit, who opposes the granting of this petition, admits in his brief (p. 5) that the court "granted defendant's motion for a stay * * * on the understanding that both parties to the suit should refrain from doing anything in connection with the applications in the Patent Office."

The petition for suspension of action until April 13, 1908, is granted.

C. C. BILLINGS,
Assistant Commissioner.

March 16, 1908.

Recorded Vol. 90 Page 286.

41

EXHIBIT No. 9.

Filed May 20, 1908.

UNITED STATES OF AMERICA:

DEPARTMENT OF THE INTERIOR,
PATENT OFFICE.
50575.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Records of this office of the Petition of W. H. Boyer and attached Copy of Exhibit "A", filed March 28, 1908, relative to

Applications of JOSEPH BERGER, JR.

Filed August 4, 1902.

Serial Number 118,236.

Feed Mechanism for Sewing Machines.

And March 19, 1903.

Serial Number 148,511.

Feeding Mechanism for Sewing Machines.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 11th, day of May, in the year of our Lord one thousand nine

hundred and eight and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.]

C. C. BILLINGS, ..
Assistant Commissioner of Patents.

42 *Petition of William H. Boyer, March 28th, 1908.*

Joseph Berger, Jr. Feeding Mech. for Sewing Machines. Filed
March 19, 1903. Serial No. 148,511.

Notice of Petition to the Commissioner of Patents.

Mr. Charles McC. Chapman, #60 Wall St., New York City.

DEAR SIR: You will please take notice that on Tuesday, March 31st, 1908, at 10 A. M., or as soon thereafter as counsel can be heard, I shall present to the Commissioner of Patents in person, the annexed petition for permission to inspect the papers in the matter of the above entitled application.

Respectfully,

C. L. STURTEVANT,
Attorney for W. H. Boyer.

Service of the above, with copy of petition, acknowledged this 27th day of March, 1908.

CHAS. McC. CHAPMAN,
Attorney for Metropolitan Sewing Machine Co.

Washington, D. C., March 23rd, 1908.

43 *Petition to Inspect and Obtain Copies.*

Joseph Berger, Jr. Feeding Mech. for Sewing Machines. Filed
March 19th, 1903. Serial No. 148,511.

Hon. Commissioner of Patents, Washington, D. C.

SIR: And now comes your petitioner, William H. Boyer, and by his attorney, Charles L. Sturtevant, requests that he be allowed to inspect and obtain copies of the papers in the above entitled application.

This application is one in which your Honor, under date of March 17th, 1908, granted a suspension until April 13th.

To bring the matter freshly before your Honor's mind, it is stated that suit was brought by your petitioner against the Metropolitan Sewing Machine Company, assignee of the above entitled application, to compel a re-assignment of said application and the invention covered thereby, to the said plaintiff, which suit was tried at a special term of the Supreme Court of the State of New York on February 10th, 1908, Mr. Justice O'Gorman delivering an opinion from the Bench favorable to your petitioner.

A certified copy of the decision of Mr. Justice O'Gorman was filed

with your Honor in connection with the petition for suspension of action in the above entitled case.

44 A motion for a stay of proceedings pending the appeal was made by the defendant, and on March 10, 1908, the Court issued the order, of which certified copy was filed by your petitioner at the Hearing, March 13th, on petition for suspension.

On March 14th, defendant made a motion before Justice O'Gorman for a resettlement of the order of March 10th, which motion was denied by Justice O'Gorman, and the stipulation referred to in said order not having been signed by defendant, the stay was denied, and the assignment ordered to be executed.

Under date of March 16th, 1908, Mr. Charles McC. Chapman addressed a communication to your Honor, giving notice that the stipulation would not be signed, and calling attention to Section 1330 of the New York State Code.

Your petitioner is informed and believes that an assignment based on the decision of Justice O'Gorman was presented to Lucius N. Littauer, the owner of the Metropolitan Sewing Machine Company, on Friday, March 20th, 1908, and that said Littauer stated in substance that he wished to present the matter to his attorneys.

As proceedings necessary to compel the signing of this instrument, or the appointment of a master to make the transfer in the name of defendant, or proceedings necessary to determine whether this is a case coming under Section 1330 of the New York State Code, may take some little time to institute and carry to a conclusion, and as in the meantime he is ignorant of the condition of the case in the Patent Office, as to whether or not action has been taken inimical to petitioner's rights, by attorneys for the Metropolitan Com-
45 pany since the decision of Justice O'Gorman, it is important to the proper protection of your petitioner's interests that he be allowed access to the files of these cases to see that his rights as the real owner are safeguarded, and have not been jeopardized by actions inimical to his interests.

Furthermore, the Metropolitan Sewing Machine Company is sending out to the trade a circular, of which a copy is attached and marked "Exhibit A."

Wherefore, your petitioner prays that he be allowed to inspect and obtain copies of the above case, in order,

1, to know whether to protect his rights, it is necessary to move for a further suspension of the cases;

2, to be able to answer intelligently that portion of the circular "Exhibit A" couched in the following language:

"So far we have overcome every kind of opposition with the exception of their (Union Special Machine Company, of which petitioner is Vice President) purchase of a contract for royalty we made with their present employee Berger on a device which is not embodied in the machines we are to-day offering on the market."

This may or may not be true. If the Berger applications embody the broad principle of these machines "they are offering on the market," the rightful owners of the Berger applications and inventions, are not the parties who are selling machines which might be

subordinate thereto, should be the ones to decide whether all the protection possible has been secured in the Berger cases.

46 It is so plain as scarcely to need elaboration, that these Berger cases even if capable of dominating the machine "they are offering on the market" may by prosecution at the hands of parties inimical to the rightful owners be so emasculated and restricted as to the claims that when the patents issue they will not cover such machines, whereas if rightfully and conscientiously prosecuted they would dominate them.

3, to be able to bring to the attention of the Court which rendered the decision ordering the transfer of the applications and inventions to the petitioner, any record of actions by the attorneys in the case, which have been taken since the decision of said Court that the latter may take action thereupon if attorneys have wilfully attempted to nullify the action of the Court by improper amendments.

Respectfully,

WILLIAM H. BOYER,
By C. L. STURTEVANT, *Attorney.*

Washington, D. C., March 23rd, 1908.

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COPY EXHIBIT "A."

NYACK, N. Y., *March 9th,* 1908.

To the Underwear Trade:

The Metropolitan Sewing Machine Co., Nyack, N. Y., of which I have become sole and responsible owner, thereby guaranteeing its stability and permanency, has during some years past developed high grade and high speed specialty sewing machines, adapted particularly to economize the manufacture of Underwear. Many styles of these machines now in use in underwear factories have proved their superior construction, and ability to accomplish special work demanded by the trade.

The Union Special Co., whose machines have had almost a monopoly in the underwear trade, are attempting by litigation, based upon the most frivolous contentions, to prevent the sale of our machines. So far, we have overcome every kind of opposition with the exception of their purchase of a contract for royalty we made with their present employee, Berger, on a device which is not embodied in the machines we are to-day offering on the market. In usual fashion, they are attempting to persuade the trade of the danger of purchasing our machines, which in fact do not embody this device or mechanism.

We would call attention to our success in the Patent Office, especially in connection with all machines having a top feed and two lower feeds, such as are used on what are known to the trade
48 as Collarette, Button Stay and Drawer Band Machines or any machine using such Feeds. The decisions of the Patent Examiner, Examiner of Interferences, Board of Examiners in Chief, and finally, of the Commissioner of Patents, have been uniformly rendered in our favor. Necessary delay must yet take place before our patent is allowed, so that we can proceed legally against in-

fringers. We will then seek injunction against the machines sold by the Union Special Co., using the Device we have invented and they have copied. We would ask the attention of the trade to this fact, for we will be aggressive in having every such infringing machine withdrawn from use.

We request an examination and trial of our machines on their merits, and ability to perform the work and cheapen the production of the Underwear Trade.

METROPOLITAN SEWING MACHINE CO.,
By LUCIUS LITTAUER, *Proprietor*.

49

EXHIBIT No. 10.

Filed May 20, 1908.

UNITED STATES OF AMERICA:

DEPARTMENT OF THE INTERIOR,
PATENT OFFICE.

50575.

To all persons to whom the presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Records of this office of the Order of the Assistant Commissioner, April 1, 1908, relative to the

Applications of JOSEPH BERGER, JR.

Filed August 4, 1902.

Serial Number 118,236.

Feed Mechanism for Sewing Machines.

And March 19, 1903.

Serial Number 148,511.

Feeding Mechanism for Sewing Machines.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 11th day of May, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.]

C. C. BILLINGS,
Assistant Commissioner of Patents.

50

Order of Assistant Commissioner of April 1st, 1908.

In accordance with the ruling made at the time of the oral argument in this case, the petition of Boyer that he be allowed to inspect and obtain copies of this application is denied and it is ordered that further action upon this application be suspended until after a de-

cision is rendered by the highest court to which appeal is taken by either party in the matter of the title to the invention of this application now pending before the courts of the State of New York.

C. C. BILLINGS,
Assistant Commissioner.

Recorded Vol. 90, Page 360.
April 1, 1908.

51

EXHIBIT No. 11.

Filed May 20, 1908.

UNITED STATES OF AMERICA:

DEPARTMENT OF THE INTERIOR,
PATENT OFFICE.

50575.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Records of this office or Order of the Assistant Commissioner, April 21, 1908, relative to the

Applications of JOSEPH BERGER, JR.

Filed August 4, 1902.

Serial Number 118,236.

Feed Mechanism for Sewing Machines.

And March 19, 1903.

Serial Number 148,511.

Feeding Mechanism for Sewing Machines.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 11th. day of May, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.]

C. C. BILLINGS,
Assistant Commissioner of Patents.

52 *Order of Assistant Commissioner of April 21st, 1908.*

In view of the assignment of this application by the Metropolitan Sewing Machine Company to Boyer filed for record in this office on April 17, 1908, the order of April 1, 1908, is modified to the extent that Boyer will be permitted to inspect and obtain copies of said application unless the Metropolitan Sewing Machine Company shall show, on or before April 24, 1908, good and sufficient reason why said permission should not be granted. The portion of the order

of April 1, 1908, suspending action on this application will remain in force.

C. C. BILLINGS,
Assistant Commissioner.

April 21, 1908.
Recorded Vol. 90 Page 459.

53

EXHIBIT No. 12.

Filed May 20, 1908.

UNITED STATES OF AMERICA:

DEPARTMENT OF THE INTERIOR,
PATENT OFFICE.

50575.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Records of this office of Brief on behalf of the Metropolitan Sewing Machine Company, filed April 27, 1908, relative to the

Applications of JOSEPH BERGER, JR.

Filed August 4, 1902.

Serial Number 118,236.

Feed Mechanism for Sewing Machines.

And March 19, 1903.

Serial Number 148,511.

Feeding Mechanism for Sewing Machines.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 11th. day of May, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.]

C. C. BILLINGS,
Assistant Commissioner of Patents.

54 *Brief on Behalf of Metropolitan Sewing Machine Co.*

Filed April 27th, 1908.

Joseph Berger, Jr. Serial No. 118,236. Filed August 4, 1902, and Serial No. 148,511. Filed March 19, 1903. Feeding Mechanism for Sewing Machines.

Renewed Petition of William H. Boyer.

Before the Commissioner of Patents.

Brief on Behalf of the Metropolitan Sewing Machine Company.

May it please your Honor:

Your orator, the Metropolitan Sewing Machine Company, has been cited to show cause why the two applications of Joseph Berger, above identified, should not be inspected and copies thereof taken by William H. Boyer, or his attorney, in accordance with the order of the Honorable Assistant Commissioner, under date of April 21, 1908, as follows:

"In view of the assignment of this application by the Metropolitan Sewing Machine Company to Boyer filed for record in this office on April 17, 1908, the order of April 1, 1908 is modified to the extent that Boyer will be permitted to inspect and obtain copies of said application unless the Metropolitan Sewing Machine Company shall show, on or before April 24, 1908, good and sufficient reason why said permission should not be granted. The portion of the
55 order of April 1, 1908, suspending action on this application will remain in force."

As a showing of cause why such inspection should not be accorded to Boyer, and why he should not be allowed to obtain copies of the said applications, the following is respectfully submitted:

It has been shown in this case, by briefs, affidavits and exhibits on former petitions of Boyer, that there is litigation pending in the Supreme Court of New York State involving a contract of Berger made with the Metropolitan Sewing Machine Company and subsequently assigned, by Berger, by mesne assignment, to said Boyer. Suit brought on this contract resulted in a judgment of the Court of original jurisdiction against the Metropolitan Sewing Machine Company, from which the latter has appealed, said appeal having been duly noted, filed, and compliance with every requirement of the New York State Code has been had, as shown by exhibits heretofore presented. The judgment involved an order by the Court upon the Metropolitan Sewing Machine Company to forthwith assign the Berger inventions and applications to Boyer, and, in an endeavor to comply with said order, the Metropolitan Sewing Machine Company executed an assignment and deposited it with the Clerk of the Court, in accordance with the provision of the Code, this assignment having been drawn up with a view to showing that it was done on compulsion of the Court's order, and that it was not

the voluntary act of the Metropolitan Company. On a motion brought by Boyer, the Court decided that the Metropolitan Company was in contempt, ordered an immediate execution and delivery of an assignment drawn up by counsel for Boyer and imposed a fine of One Hundred Dollars (\$100) as a penalty for the alleged contempt. The said order of the Supreme Court in annexed hereto and marked "Exhibit A". From this order, your Honor will plainly see that the assignment referred to in the decision and order to show cause, of the Honorable Assistant Commissioner, under date of the 21st inst., was not the voluntary act of the Metropolitan Sewing Machine Company, but was forced upon the Company by the order of the Court on pain of the President of the Company being imprisoned. The said assignment, having been made under compulsion of the order of the Court in the face of the appeal taken in the matter of the litigation involving the contract and the assignment, clearly amounts to duress, since the President of the Company was in fear of imprisonment as a result of an order on a purely collateral matter and interlocutory proceeding. This assignment, consequently, not being a voluntary act of the Metropolitan Company, and no decision on appeal having been as yet rendered, there is no real change in the equities between Boyer and the Metropolitan Company, or the actual conditions and circumstances surrounding the case. In other words, when the Honorable Assistant Commissioner, on the 1st day of April, 1908, denied the petition of Boyer to inspect the file-wrapper and contents, he recognized a certain state of facts which were clearly in favor of the Metropolitan Sewing Machine Company. There has been no change in this state of facts, nor any change in the relation of the parties, nor has there been any voluntary act on the part of the Metropolitan Company, or any of any kind, waiving its rights in connection with the Berger applications.

At the time the Honorable Assistant Commissioner rendered his decision of April 1, 1908, as assignment to Boyer had been made, which, in point of law, was just as good as the one which the Court has compelled the Metropolitan Company to execute; at the time said decision was rendered by the Honorable Assistant Commissioner, he recognized not only the fact of the assignment, but accepted it as good and valid and sufficient to pass title to Boyer in the event the same became effective by decree of the Court of Appeals of the State of New York; and, at the time the Honorable Assistant Commissioner made his above decision, he also recognized the fact that, as shown by the exhibits in the case, the Metropolitan Company has duly taken an appeal from the decision of the Court of original jurisdiction to the Appellate Division of the State of New York, and that the taking of such appeal saved all the rights of the Metropolitan Company in the cases, notwithstanding the adverse decision. Having recognized the equities of the Metropolitan Company, in view of its appeal, and notwithstanding the execution and deposit of the assignment, it is clear that the mere execution, delivery and recording of the subsequent assignment, given by the President of the Company under duress, can, in nowise, change the equities or modify the conditions of the case.

In executing this assignment, which the President of the Metropolitan Company was compelled to do, or else go to jail under the order of Mr. Justice Dowling, he waived none of his rights, 58 did not change his status under the appeal, and consented in no manner to any action which Boyer might take under the circumstances.

Your Honor can readily see that, if permission be given to Boyer to inspect the file-wrapper and contents of the Berger applications, or take copies thereof, and the decision of the Court of original jurisdiction should be reversed, thus restoring the applications and inventions of Berger to the Metropolitan Company, Boyer would have, in the meantime, obtained wrongful access to the cases. Therefore, it is respectfully submitted that the decision of the Honorable Assistant Commissioner, of April 1, 1908, refusing Boyer the right to inspect and take copies of the applications should be adhered to.

Additionally, your orator directs the attention of the Honorable Commissioner again to the fact that there is litigation pending in the Circuit Court of the United States, Second Circuit, Southern District of New York, between the Metropolitan Sewing Machine Company and the Union Special Machine Company, of which latter Boyer is an officer. This litigation has reference to the Berger Feeding Mechanism, the Union Special Company alleging infringement by the machines manufactured by the Metropolitan Company. The Metropolitan Company was on the verge of putting in testimony in defense on the 23rd inst., the day on which the Commissioner's order of the 21st inst. was received by counsel for the Metropolitan Company through his Associates, Meyers, Cushman & Rea, of Washington, D. C. Inasmuch as it was foreseen by counsel for the Met-

59 metropolitan Company that inspection of the Berger applications would aid counsel for the Union Special Company in cross-examining the expert and would also aid said Company in putting in its rebuttal testimony, proceedings were immediately suspended pending your Honor's decision on the order to show cause. The fact that inspection of the Berger applications will aid counsel for the Union Special Company in this suit is appreciated by the latter, is evidenced by his persistent efforts to gain such inspection, which has extended over a period of more than two years, during which time the said infringement suit has been pending. Therefore, it is clearly and obviously wrong to the Metropolitan Company to allow such inspection, or the taking of copies of the applications of Berger, if for no other reason than that it will give the Union Special Company an unfair advantage in the said litigation.

In conclusion, it is respectfully submitted that, since the conditions as the Honorable Assistant Commissioner found them on April 1, 1908, have not been changed, in so far as title is concerned, by the compulsory assignment now on record in the Patent Office, Boyer is not entitled to inspection of the applications, nor to take copies thereof; and, furthermore, since inspection of the applications, or the taking of copies thereof, will militate against the interests of the Metropolitan Company in the litigation entitled Union Special Machine Company v. Metropolitan Sewing Machine Company, Lucius N. Littauer, and Charles McC. Chapman, and give to

said complainant an unfair advantage in said suit, the decision of the Honorable Assistant Commissioner, under date of April 1, 1908, should be adhered to.

Respectfully submitted,

CHAS. McC. CHAPMAN,
Att'y for Metropolitan S. M. Co.

60

Rule to Show Cause.

Issued May 20, 1908.

In the Supreme Court of the District of Columbia.

At Law. #50575.

UNITED STATES *ex Rel.* WILLIAM H. BOYER, Petitioner,
vs.

EDWARD B. MOORE, Commissioner of Patents, Respondent.

Upon consideration of the petition for mandamus in the above entitled cause, it is ordered on this twentieth day of May, 1908, that the Respondent herein show cause on the 28th day of May, 1908, at 10 o'clock A. M., before this court sitting in Circuit Court No. One why a writ of mandamus should not issue as prayed in said petition, the date of hearing to be determined by the Court on said return day; provided, that a copy of this order and of said petition be served upon said Respondent on or before the 21st day of May, 1908.

WRIGHT, *Justice.*

Marshal's Return.

Served copy of within order together with copy of the petition in this cause on Edward B. Moore Commissioner of Patents personally.
May 20, 1908.

AULICK PALMER, *Marshal,*
H.

61

Answer.

Filed May 28, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50575.

THE UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER,
Relator,*v.*

EDWARD B. MOORE, Commissioner of Patents, Respondent.

To the Honorable the Judges of the Supreme Court of the District of
Columbia:

The respondent, Edward B. Moore, Commissioner of Patents, for answer, paragraph for paragraph, to the order to show cause why the writ of mandamus should not issue, says, upon information and belief:

1. Respondent admits that he is and was the Commissioner of Patents as alleged in paragraph 1 of the petition. Concerning the allegations respecting the relator contained in said paragraph, respondent is not informed and can neither affirm nor deny the truth of the same.

2. Respondent admits that the allegations of paragraph 2 of the petition are true.

3. Respondent admits that the allegations of paragraph 3 are true, except that respondent avers that the denial of the relator's petition was limited to such time as the question of title is in litigation, as appears from the concluding paragraph of the Commissioner's decision of April 27, 1908 (Exhibit 4), which states:

"The request of Boyer for access to this application pending the determination of the question of title on appeal is accordingly denied."

4. Respondent has no information as to the truth or falsity of the allegations stated in paragraph 4 of the petition other than is contained in Exhibit 1, therein mentioned and annexed to relator's petition, to which reference is made for information as to the matters alleged. Concerning the truth of the allegation "that said corporation failed and refused to comply with the terms of the contract," respondent is not informed and can neither affirm or deny the same.

5. Respondent is without information as to the truth or falsity of the allegations of paragraph 5, except such as is contained in the exhibits annexed to relator's petition. It is noted that the date of the decree signed by Justice O'Gorman is March 2, 1908.

6. Respondent believes that the allegations of paragraph 6 are in accord with the facts as disclosed in the exhibits filed with the relator's petition, except that the allegation—

"* * * that Judge O'Gorman granted said stay on the condition that said defendant enter into a stipulation that it would take

no action in the Patent Office to change the *status quo* of the aforesaid applications as it existed February 10th, 1908."

does not set forth all the conditions upon which Judge O'Gorman granted said stay, as appears from the copy of Judge O'Gorman's order, "Exhibit 6" attached to relator's petition. Attention is called to the fact that the relator admits in this paragraph of his petition "that appeal was taken by said Metropolitan Sewing Machine Company, defendant in said cause, to the appellate division of the Supreme Court." A certified copy of said appeal was filed in the Patent Office by the Metropolitan Sewing Machine Company, a copy of which is attached hereto and made a part hereof and marked "Exhibit A."

7 and 8. Concerning the allegations of paragraphs 7 and 8, relative to the proceedings and orders of the New York courts, respondent's only information is through documents filed in the Patent Office. The allegations of these paragraphs appear to be in accord with said documents, but reference is made to the exhibits annexed to relator's petition for more accurate information concerning the matters alleged.

It is the contention of the Metropolitan Sewing Machine Company that they complied with the requirements of Sections 1330 and 1352 of the New York Code relative to a stay of proceedings during appeal and that the orders of the Justices referred to exceeded the requirements of the New York Statutes.

9. Respondent admits that the allegations of paragraph 9 are true.

10. Respondent admits that the allegations of paragraph 10 are true.

11. Respondent admits that the allegations of paragraph 11 are true.

12. Respondent admits that the allegations of paragraph 12 are true.

13. Respondent admits that the allegations of paragraph 13 are true, except that the brief (Exhibit 12) referred to in this paragraph does not state that the relator, Boyer, is "Vice President and General Eastern Manager" of the Union Specialty Machine Company, but merely that Boyer is an officer of said company, nor does said brief disclose the identity of the expert mentioned; respondent is therefore unable to affirm or deny the allegation that said expert "is also one of the defendants" in the suit mentioned in said paragraph and is "attorney of record in the Patent Office for the Metropolitan Sewing Machine Company in connection with the aforesaid Berger cases."

14. Respondent avers that the allegation of paragraph 14 does not fully state the reasons given by the Commissioner for refusing relator's petition for access to the Berger application, but that the decision of the Commissioner states:

"Under the order of April 1, 1908, also by reason of the assignment of record by the Metropolitan Sewing Machine Company, said company can take no action on this application pending a decision on appeal. It appears therefore that the interests of Boyer are fully

protected and there is no good reason based on this ground for permitting him to have access to the application. The order holding that neither party be permitted to take action in the case in which appeal is pending is conceded to be just because of the injury that might result to the other party if the final decision should be in his favor. To permit Boyer under these circumstances to have access to the application might equally well cause irreparable injury to the Metropolitan Sewing Machine Company in case it is finally held entitled to the application."

15. Respondent admits that the exhibits recited in paragraph 15 show a part of the history of relator's attempt to gain access
65 to the Berger applications, but denies the conclusions sought to be drawn by petitioner from the same.

16. The respondent denies that the allegations of paragraph 16 are true.

Respondent denies that he is depriving the relator of his legal rights in denying him the right to inspect, obtain copies, or prosecute the Berger applications while his right to said applications is the subject of litigation and is in process of being determined by the courts. It has not been finally determined by the courts that the relator is the lawful owner of said applications. Furthermore, even if it was finally determined that relator is the legal assignee of the Berger applications, there is no law or statute requiring the Commissioner to give him the privilege of inspecting or prosecuting said applications, and the relator has cited no such law or statute.

The only statute relating to the rights of an assignee in an application is Section 4895 of the Revised Statutes, which is as follows:

"SEC. 4895. Patents may be granted and issued or reissued to the assignee of the inventor or discoverer; but the assignment must first be entered of record in the Patent Office. And in all cases of an application by an assignee for the issue of a patent, the application shall be made and the specification sworn to by the inventor or discoverer; and in all cases of an application for a reissue of any patent, the application must be made and the corrected specification signed by the inventor or discoverer, if he is living, unless the patent was issued and the assignment made before the eighth day of July, eighteen hundred and seventy."

This statute does not place the assignee in the place of the inventor, or give the assignee the right to inspect and obtain
66 copies or to prosecute the application. Even the provision of the statute that the "patents *may* be granted and issued or reissued to the assignee of the inventor or discoverer" is merely permissive and not mandatory. It leaves the matter to the discretion of the Commissioner.

Where the right of the assignee is the subject of litigation, or there are conflicting assignments, it has long been the practice of the Commissioner to issue the patent to the inventor. This practice has been sanctioned by the Courts and the Court of Appeals of the District of Columbia in its recent decision *In re Pearsall* (rendered April 20, 1908,) said:

"The fallacy in appellant's contention consists in his assumption that the patent to Whittall is void. The application forming the

basis of that patent was regularly made, and, but for the prior assignment, no question could be raised as to the jurisdiction and authority of the Commissioner in the premises. Clearly he had jurisdiction of the subject-matter of his decision which was the invention. Having determined that a patent should issue, it is conceded he might have ignored both assignments and issued a patent in the name of the inventor, which, probably, would have been the better course for him to have followed.

"In *Gayler v. Wilder*, 10 How. 477, it was ruled that where a patent issues to an applicant who has assigned his interest therein, the patent is valid and by operation of law vests in the assignee."

Where the title of the assignee is not disputed and is of record in the Patent Office, it is the practice not only to issue the patent to the assignee, but to permit him to prosecute the application. As heretofore stated, however, this is not governed by statute, but is a matter of practice in the Patent Office, discretionary with the Commissioner of Patents. Relator apparently has as good ground for con-

67 tending that he has the right to prosecute the applications, as he has for claiming the right to inspect and obtain copies thereof. It is stated by both parties that the appeal will not stop with the present appeal to the Appellate Division of the Supreme Court, but will be carried to the Court of Appeals of New York. Manifestly it would lead to an intolerable state of affairs to permit first one party and then the other to take up and prosecute the applications according as he might be successful or defeated in these successive appeals. Respondent therefore considered it best for the rights of all parties concerned to suspend all action on the cases and preserve them in their present condition pending a final adjudication of the rights of the respective parties. Whatever relator's rights may be at the present time, he clearly would have no right to inspect the applications in question if the final decision in the New York court is against him, but if a writ of mandamus issues on this petition, respondent will be powerless to prevent it.

If it is the contention of the relator that the question of permitting an assignee, whose right is disputed, to have access to the application does not involve an act of discretion on the part of the Commissioner, but is a mere ministerial duty, then such act is under the direction and control of the Secretary of the Interior and an appeal lies to him from the action of the Commissioner, in which case relator is not, as alleged, "without redress or remedy" other than a writ of mandamus.

Respondent denies that he has in his action nullified two decisions of one Justice of the Supreme Court of the State of New York, and one decision of another Justice of said court. The decisions
68 of the said Justices did not direct the Commissioner of Patents to disclose the contents of the applications in question to the relator. The assignment executed in accordance with their decisions has been received and recorded in the Patent Office. The privilege formerly accorded the Metropolitan Sewing Machine Company, as assignee, of prosecuting the applications has been denied them. The privilege of access to, and prosecution of, the applications has been merely suspended to relator pending the final deter-

mination in the courts of his right to the applications. Moreover, if this can be held in any way a nullification of the decisions of the said Justices, respondent avers that he is not within the jurisdiction of said Justices and that their decisions are not binding upon him.

Whether the action of the respondent is depriving relator of valuable evidence, he is unable to state, but he denies that the relator has established a legal right thereto and avers that any rights he may have are not finally determined. Respondent further avers that if relator should be allowed access to said applications and it should be finally determined by the courts that he has no right thereto, according to relators' own contention the Metropolitan Sewing Machine Company would suffer irreparable injury.

In accordance with Rule 15 of the Rules of Practice of the United States Patent Office applications are preserved in secrecy and information concerning the same is given only under special circumstances. In the case of *United States ex rel. Bulkley v. Butterworth*, Commissioner of Patents, 81 O. G., 505, where petition was made

69 for a writ of mandamus to require the Commissioner to permit the relator in that case to examine a certain application which he alleged was material evidence in a pending suit, this Court through Justice Cole said:

"The court in which a suit is pending and not the department officer is the appropriate tribunal to determine whether a given paper should be produced as evidence, and it is not to be doubted that the respondent upon such certificate from the Circuit Court of the United States for the Northern District of California would furnish the copies requested. In his return he expresses his willingness to furnish copies of the designated papers upon a satisfactory showing that they are proper evidence in the case mentioned, and as no sufficient showing in this regard was made to respondent it follows that the writ of mandamus must be refused and the rule discharged and the petition dismissed, with costs."

Following this ruling it is the practice of the Patent Office to furnish copies of an application upon such a certificate of the court before which the suit is pending. If the relator in this case can obtain such a certificate from the court before which his suit is pending, he has an adequate remedy without a writ of mandamus.

Inasmuch as all action on the applications in question has been suspended pending the final determination of their ownership, as shown by the several orders annexed as exhibits to relator's petition, the interests of relator are fully preserved without his inspection of said applications. The fear expressed by relator that action may be taken by the Metropolitan Sewing Machine Company prejudicial to his rights, or that the applications may become abandoned, is without foundation. In the present status of the assignments, the Metropolitan Sewing Machine Company could not take action on said applications, since it has no title which the Patent Office would
70 recognize as giving it power to prosecute the applications, even if action had not been suspended by order of respondent.

Respondent denies that the relator has accurately stated the law in his allegation that "the law providing that an application becomes abandoned for lack of prosecution for a period of twelve months

and the Commissioner of Patents has no authority to suspend the operation of the statute requiring such prosecution." The statute, Section 4894 of the Revised Statutes, reads as follows:

"SEC. 4894. All applications for patent shall be completed and prepared for examination within one year after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within one year after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable."

Respondent avers that where prosecution is suspended by order of the Commissioner, he would be precluded from holding that the delay in the prosecution was avoidable and that the application is abandoned. Action on the application is often suspended for over a year while the case is involved in an interference proceeding, or in a suit in equity under Section 4915 of the Revised Statutes, without the application becoming abandoned.

Respondent can neither affirm or deny the allegation that the relator is unable without access to the applications in question to answer the trade circular forming part of his "Exhibit 9," but avers that this has no bearing upon relator's right to inspect said applications.

Respondent denies that the allegations of paragraph 17
71 are true. As heretofore stated, by order of respondent all action on the Berger cases is suspended pending the determination of the relator's rights.

Respondent as further answer to the petition of the relator shows that the various matters therein recited require the exercise of discretion on the part of respondent, and that he has not refused to act thereon, but, on the contrary, he has acted to the best of his judgment, that he has the clear legal right to act and decide for himself and that having so acted, this court is without jurisdiction to review his acts and to compel him by writ of mandamus to undo what he has done.

And now, having fully answered the said petition, respondent prays that the rule to show cause issued against him be discharged, and that respondent be hence dismissed with his reasonable costs.

EDWARD B. MOORE,
Commissioner of Patents.

WEBSTER S. RUCKMAN, *Attorney.*

DISTRICT OF COLUMBIA:

On this day personally appeared before me, a notary public in and for the District of Columbia, Edward B. Moore, and made oath that he is the respondent in the above entitled case; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the same is true of his knowledge, except as to the matters there stated to be alleged on information and belief, and that as to those matters he verily believes it to be true.

72 Sworn to and subscribed before me this 28th day of May,
1908.
[SEAL.]

EDWD. B. FOX,
Notary Public, D. C.

73 EXHIBIT A.

Filed May 20, 1908.

Supreme Court, County of New York.

WILLIAM H. BOYER, Plaintiff-Respondent,
against
METROPOLITAN SEWING MACHINE COMPANY, Defendant-Appellant.

Notice of Appeal to Appellate Division.

You will please take notice, that the above-named defendant hereby appeal- to the Appellate Division of the Supreme Court, First Department, from the judgment of this Court, in this action, entered in the office of the Clerk of New York County, on the 3rd day of March, 1908, in favor of the plaintiff and against the defendant, and from each and every part of said judgment.

Dated New York, March 4, 1908.

Yours, etc.,
(Sgd.)

CHARLES M. CHAPMAN,
Attorney for Def't-Appl't,
60 Wall Street, Borough of Manhattan, New York City.

To Simpson Werner & Cordoza, Esq., Attorneys for Pl'ff, Resp'd't;
and Peter J. Dooling, Esq., Clerk of New York County.

74 No. 463.

STATE OF NEW YORK,
County of New York, ss:

I, Peter J. Dooling, Clerk of the said County and Clerk of the Supreme Court of said State for said County, Do Certify, That I have compared the preceding with the original Notice of Appeal on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original. Indorsed Filed Mch. 4, 1908.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 11th day of Mch., 1908.

PETER J. DOOLING, *Clerk.*

75

Supreme Court, New York County.

WILLIAM H. BOYER, Pl'ff-Resp'd't,

vs.

METROPOLITAN SEWING MACHINE COMPANY, Def't-Appl't.

Undertaking on Appeal.

Whereas, on the 3rd day of March, 1908, in the above named Court the above named respondent recovered against the above named appellant a judgment and \$117.30 costs.

And the above named appellant feeling aggrieved thereby, intends to appeal therefrom to the Appellate Division of the Supreme Court of the State of New York, First Department.

Now, therefore, we, Joseph M. Simon, residing at No. 365 W. 118 Street, in the City of New York, and Jacob C. Simon, residing at No. 1261 Madison Ave., in said City, do jointly and severally, pursuant to the Statute in such case made and provided, undertake, that the appellant will pay all costs, disbursements awarded against the appellant if such judgment shall be affirmed, or the appeal be dismissed, together with all costs and damages which may be awarded against the appellant thereon, not exceeding five hundred dollars.

(Sgd.)

JACOB C. SIMON.

(Sgd.)

JOSEPH M. SIMON.

Dated New York, N. Y., the 5th day of March, 1908.

76

CITY AND COUNTY OF NEW YORK, ss:

Jacob C. Simon being sworn says, that he is a resident and a free holder within the State of New York, and worth \$500 the sum specified in the above undertaking, over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

(Sgd.)

JACOB C. SIMON.

Sworn to before me this 5th day of March, 1908.

[L. s.]

(Sgd.)

J. TUFTON MASON,

Commissioner of Deeds, New York City.

CITY AND COUNTY OF NEW YORK, ss:

Joseph M. Simon being sworn says, that he is a resident and a free holder within the State of New York, and worth \$500 the sum specified in the above undertaking, over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

(Sgd.)

JOSEPH M. SIMON.

Sworn to before me this 5th day of March, 1908.

[L. s.]

(Sgd.)

J. TUFTON MASON,

Commissioner of Deeds, New York City.

STATE OF NEW YORK,

City & County of New York, ss:

77 I certify that on the 5th day of March, 1908, before me personally appeared the above named Joseph M. Simon and Jacob C. Simon known to me to be the individuals described in, and who executed the above undertaking, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

[L. s.]

(Sgd.)

J. TUFTON MASON,

Commissioner of Deeds, New York City.

No. 964.

STATE OF NEW YORK,

County of New York, ss:

I, Peter J. Dooling, Clerk of the said County and Clerk of the Supreme Court of said State for said County, Do Certify, That I have compared the preceding with the original Undertaking on Appeal on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed Mch. 5, 1908.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 11th day of Mch.

[SEAL.]

PETER J. DOOLING, *Clerk.*

78

Opinion of the Court.

Filed July 16, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50575.

THE UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER,
Relator,

vs.

EDWARD B. MOORE, Commissioner of Patents, Respondent.

Motion for Judgment on the Pleading.

It appears from the pleadings herein that one Berger was the original owner of divided applications for a patent. Berger assigned the applications to the Metropolitan Sewing Machine Company upon certain conditions with which the Sewing Machine Company failed to comply; subsequently Berger transferred all his right, title and interest in his contract with the Company and in the applications to the Relator, Boyer; Boyer brought suit in the Supreme Court of the State of New York, for the County of New York, against the Company in order to compel a re-assignment of the applications from the

Company to himself; after a hearing the suit was decided in Boyer's favor, the Company was ordered to make the assignment, refused so to do, contempt proceedings were instituted against it, and as an outcome of these proceedings the Company executed the assignment and delivered it to the Relator; the case was appealed to the Appellate Division where the order of the trial Court was affirmed and from there an appeal was taken to the Court of Appeals of the State of New York; no supersedeas of the order of the trial Court

79 was ever had. Meanwhile, the Relator duly filed the assignment so procured with the Commissioner of Patents and requested that he be permitted to inspect and obtain copies of the applications, which request the Commissioner of Patents, after due consideration, declined to grant. The action here is in mandamus to determine the right of the Relator to the inspection. The Commissioner of Patents has found himself of the opinion that his duty required him to refuse the request on the ground that the subject matter of the application was in litigation, and this seems to be the point of the case. If conflicting claims to the applications existed there could be no doubt of the correctness of the Commissioner's position, but it seems to me that a claim which has been adversely adjudicated by a court of full jurisdiction cannot longer be said to "exist" as an adverse claim. I cannot escape the conviction that the judgment of the Supreme Court of New York, until reversed or modified, or until superseded by appropriate proceedings, is conclusive as between the parties to that suit on all questions of ownership of the applications; that the "full faith and credit" clause of the constitution reaches the case, and that the executive branch, as well as the judicial tribunals of the Government, are required to recognize the conclusive effect of that judgment. It has been suggested by counsel for the Commissioner that irreparable damage might result to the Sewing Machine Company if the Relator were permitted to inspect the applications; while this may be, yet the Sewing Machine Company has itself the remedy in hand by availing itself of the opportunity to supersede the judgment in accordance with the laws of New

80 York and the terms prescribed by the New York Court; if the matter is not regarded by them as of sufficient importance to require this step on their part, it is hardly to be expected that the Commissioner of Patents ought to be under the duty of guarding them. I have reflected a good deal over the point and am forced to the conclusion that the New York judgment must be regarded as conclusive, that as a result the records of the Patent Office show the Relator with a clear title and a right to inspection and copies.

Motion for judgment is therefore granted.

W.

Supreme Court of the District of Columbia.

THURSDAY, *July* 16, 1908.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

At Law. No. 50575.

UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER, Relator,
vs.
EDWARD B. MOORE, Commissioner of Patents, Respondent.

This cause coming on to be heard upon the petition, rule to show cause and return of respondent thereto, and the motion for judgment, after argument of counsel, it is considered that the prayer of the petition be, and the same is hereby granted, and the writ
81 of peremptory mandamus is hereby ordered to issue in conformity with the petition, and that the relator recover against the respondent his costs of this proceeding, to be taxed by the Clerk and have execution thereof.

Writ of Mandamus.

Issued July 16, 1908.

Supreme Court of the District of Columbia.

At Law. No. 50575.

UNITED STATES *ex Rel.* WILLIAM H. BOYER, Relator,
v.
EDWARD B. MOORE, Commissioner of Patents, Respondent.

The President of the United States to the Respondent, Greeting:

Whereas, lately, in the Supreme Court of the District of Columbia, the relator filed a petition for the writ of mandamus to be directed to you, requiring and commanding you to grant unto him through his attorney, permission to inspect and obtain copies of applications for Letters Patent, numbered respectively 118236 and 148511 filed by one Joseph Berger, Jr.; and said cause having been heard, it was
82 adjudged and ordered by the said Court on the 16th day of July, A. D., 1908, that peremptory writ of mandamus issue forthwith.

Therefore, you are peremptorily commanded and enjoined, that immediately after the receipt of this writ, and without further delay, you grant unto said Relator through his Attorney, permission to inspect, and obtain copies of, applications for letters patent filed by Joseph Berger, Jr., and serially numbered 118236 and 148511.

And this you are not to omit, and how you shall have obeyed and executed this writ, make known to the Court within twenty days from the date hereof by returning the same into the Clerk's Office properly endorsed.

Witness, The Honorable Harry M. Clabaugh, Chief Justice of said Court, this 16th day of July, A. D. 1908.

[SEAL.]

J. R. YOUNG, *Clerk*,
By ALF. G. BUHRMAN,
Ass't Clerk.

Marshal's Return.

Served copy of the within writ on Edward B. Moore Commissioner of Patents personally.

July 17, 1908.

AULICK PALMER, *Marshal*.
H.

83 Supreme Court of the District of Columbia.

WEDNESDAY, *August 5, 1908.*

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * *

At Law. No. 50575.

UNITED STATES *ex Rel.* WILLIAM H. BOYER, Relator,
vs.

EDWARD B. MOORE, Commissioner of Patents, Respondent.

On consideration of the motion of respondent it is, this 5th day of August, 1908, Ordered that the time within which return to the peremptory writ of mandamus heretofore issued in this cause be extended to expire with the expiration of the limit of time within which appeal may be taken to the Court of Appeals of the District of Columbia from the order granting said writ, that is to say, until and including Saturday, August 8, 1908.

JOB BARNARD, *Justice.*

FRIDAY, *August 7, 1908.*

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

At Law. No. 50575.

UNITED STATES *ex Rel.* WILLIAM H. BOYER, Relator,
vs.

EDWARD B. MOORE, Commissioner of Patents, Respondent.

84 Now comes here the Respondent and prays an appeal to the Court of Appeals of the District of Columbia, which is allowed, and execution of the writ of mandamus is stayed pending the determination of said appeal, upon the filing by the Respondent of a supersedeas bond in the sum of Five hundred dollars (\$500).

SATURDAY, August 8, 1908.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

At Law. No. 50575.

UNITED STATES *ex Rel.* WILLIAM H. BOYER, Relator,
vs.

EDWARD B. MOORE, Commissioner of Patents, Respondent.

The order of the Court in the above entitled cause allowing an appeal upon the filing of a Supersedeas bond in the sum of Five hundred dollars (\$500) is hereby modified, and the Respondent, in lieu of said bond, is hereby permitted to deposit the cash sum of five hundred dollars (\$500) in the Registry of the Court.

JOB BARNARD, *Justice.*

85

Memorandum.

August 8, 1908.—\$500 deposited in lieu of appeal bond.

Order for Appeal and Citation.

Filed August 8, 1908.

In the Supreme Court of the District of Columbia, the 8th Day of August, 1908.

At Law. No. 50575.

UNITED STATES *ex Rel.* WILLIAM H. BOYER, Relator,
vs.

EDWARD B. MOORE, Commissioner of Patents, Respondent.

The Clerk of said Court will enter an appeal to the Court of Appeals and issue citation to appellee.

W. S. RUCKMAN,
Attorney for Respondent.

86

Notice of Waiver of Citation.

Filed August 10, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50575.

THE UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER,
Relator.

v.

EDWARD B. MOORE, Commissioner of Patents, Respondent.

Notice by citation of the appeal to the Court of Appeals of the District of Columbia by the respondent in the above entitled cause is

hereby waived, on the understanding that \$500 cash has been deposited.

C. L. STURTEVANT,
Attorney for William H. Boyer, Relator.

August 8, 1908.

Directions to Clerk for Preparation of Transcript of Record.

Filed August 10, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50575.

THE UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER,
Relator,
v.

EDWARD B. MOORE, Commissioner of Patents; Respondent.

87 The clerk is directed to prepare a transcript of the record
in the above entitled case on appeal to the Court of Appeals
and to include the following papers:

Petition of relator and rule to show cause,

Exhibits of relator,

Return of respondent and attached exhibit,

Decision of Justice Wright,

Decree or order of Justice Wright,

Writ of Mandamus,

Order of Justice Barnard extending time for return of writ to
August 8, 1908,

Order of Justice Barnard granting stay of execution of writ on
filing of supersedeas bond,

Supplemental order of Justice Barnard granting said stay, on cash
deposit,

Note deposit of said cash,

Instructions to clerk to enter appeal to Court of Appeals,

Waiver of citation by relator.

W. S. RUCKMAN,
*Counsel and Attorney for
Commissioner of Patents.*

August 8, 1908.

88 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of
Columbia, hereby certify the foregoing pages numbered from 1 to 87,
both inclusive, to be a true and correct transcript of the record ac-

according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 50575 At Law, wherein United States of America, *el rel.* William H. Boyer is Relator, and Edward B. Moore, Commissioner of Patents, is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 8th day of September, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1959. Edward B. Moore, Commissioner of Patents, appellant, *vs.* United States of America *ex rel.* William H. Boyer. Court of Appeals, District of Columbia. Filed Sep. 25, 1908. Henry W. Hodges, clerk.

ADDITION TO RECORD PER STIPULATION OF COUNSEL.

In the Court of Appeals of the District of Columbia.
OCTOBER TERM, 1908.

No. 1959.

No. 30, SPECIAL CALENDAR.

EDWARD B. MOORE, Commissioner of Patents, Appellant,
v.

UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER.

It appearing that the transcript of record in the above entitled appeal does not include the motion for judgment filed in the Supreme Court of the District of Columbia by the relator, following the answer filed by respondent, it is hereby stipulated by and between the attorneys for the respective parties that the following is a true copy of the said motion for judgment and that printed copies thereof shall be added to and constitute a part of the printed transcript of record in this court.

C. L. STURTEVANT,
Attorney for W. H. Boyer, Relator.

W. S. RUCKMAN,
*Attorney for Edward B. Moore, Commissioner
of Patents, Respondent.*

Washington, D. C., October 20, 1908.

Motion for Judgement.

Filed May 28th, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50575.

UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER, Relator,
versus

EDWARD B. MOORE, Commissioner of Patents, Respondent.

And now comes the Relator, by Charles L. Sturtevant, his attorney, and moves for a peremptory writ of mandamus, against the Respondent, notwithstanding the return of the Respondent herein.

CHARLES L. STURTEVANT,
Attorney for Relator.

[Endorsed:] No. 1959. Edward B. Moore, Commissioner of Patents, appellant, *vs.* U. S. of A. *ex rel.* William H. Boyer. Addition to Record per Stipulation of Counsel. Court of Appeals, District of Columbia. Filed Oct. 20, 1908. Henry W. Hodges, Clerk.

ADDITION TO RECORD PER STIPULATION OF
COUNSEL.

Court of Appeals, District of Columbia

OCTOBER TERM, 1908.

No. 1959.

No. 30, SPECIAL CALENDAR.

EDWARD B. MOORE, COMMISSIONER OF PATENTS,
APPELLANT,

vs.

UNITED STATES OF AMERICA *EX REL.* WILLIAM H.
BOYER.

FILED OCTOBER 28, 1908.

Addition to Record per Stipulation of Counsel.

In the Court of Appeals of the District of Columbia, October Term,
1908.

No. 1959.

No. 30, Special Calendar.

EDWARD B. MOORE, Commissioner of Patents, Appellant,

vs.

UNITED STATES OF AMERICA *ex Rel.* WILLIAM H. BOYER, Relator.

It appearing that the Transcript of Record in the above entitled appeal does not include one of the exhibits filed by the Relator, namely, the decision of the Appellate Division of the Supreme Court

of the State of New York on the appeal from the contempt order, it is hereby stipulated by and between the attorneys for the respective parties, that the annexed is a true copy of the said decision, and that printed copies thereof shall be added to and constitute a part of the printed record in this Court.

C. L. STURTEVANT,
Attorney for W. H. Boyer, Relator.

W. S. RUCKMAN,
Attorney for Edward B. Moore, Respondent.

Washington, D. C., October 27th, 1908.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 29th day of May, 1908.

Present: Hon. George L. Ingraham,
" Chester B. McLaughlin,
" John Proctor Clarke,
" James W. Houghton,
" Francis M. Scott,
Justices.

2187.

WILLIAM H. BOYER, Resp't,

vs.

METROPOLITAN SEWING MACHINE Co. and LUCIUS N. LITTAUER,
App'ts.

Affirmance of Order.

An appeal having been taken to this Court by the defendant & Lucius N. Littauer from an order of the Supreme Court entered on the 15th day of April, 1908, and said appeal having been argued by Mr. Sherrill Babcock of counsel for the appellant- and by Mr. B. N. Cardozo of counsel for the respondent; and due deliberation having been had thereon, it is hereby unanimously ordered that the order so appealed from be and the same is hereby affirmed with \$10 costs and disbursements.

Enter.

G. L. I.

[Endorsed:] Appellate Division of the Supreme Court, First Judicial Department. William H. Boyer, Respondent, *vs.* Metropolitan Sewing Machine Co. and Lucius N. Littauer, Appellants. (Certified Copy.) Order Affirming Order.

Appellate Division of the Supreme Court, First Judicial Department.

CLERK'S OFFICE, CITY OF NEW YORK.

I, Alfred Wagstaff, Clerk of the Appellate Division of the Supreme Court in the First Judicial Department, do hereby certify that the foregoing is a copy of the order made by said court upon the Appeal in the above entitled action or proceeding, and entered in my office on the 29th day of May, 1908, and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of New York, this 26th day of October, 1908.

[Seal Supreme Court, Appellate Division, First Department.]

ALFRED WAGSTAFF, *Clerk*

[Endorsed:] No. 1959. Edward B. Moore, Commissioner of Patents, Appellant, *vs.* United States of America *ex rel.* William H. Boyer. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Oct. 28, 1908. Henry W. Hodges, Clerk.